IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.314/2003

Shri Uday Y. Naik,
r/o. Daga, Ponda, Goa. .... Petitioner.

Vs.

1. Umakant Motiram Kavlekar,
alias Umakant Bhaskar Kavlekar,
r/o. Kavle, Ponda, Goa.

2. Mrs. Manjula Y. Naik,

3. Shri Babusso Y. Naik,

4. Mrs. Usha Babusso Naik,

5. Mrs. Joti U. Naik,
All major, residing at
Daga, Ponda, Goa. .... Respondents.

Shri Rohit Bras de Sa, Advocate for the petitioner.

Shri V.R. Tamba, Advocate for respondent No.1.

CORAM : F.I. REBELLO, J.

DATE : JULY 18, 2003.

ORAL JUDGMENT:

Rule. Respondents waive service. Heard forthwith. The petitioner being aggrieved by the order of the trial Court dated 18.6.2003 striking off the pleadings of tenancy, has moved this Court by the present writ petition. In answer to the suit filed by the respondent No.1 herein, the petitioner herein pleaded that he was a tenant of the suit property along with some others, and by virtue of the Vth Amendment to the Agricultural Tenancy Act, he has become the deemed

owner and, therefore, Civil Court had no jurisdiction. Based on those pleadings, the trial Court framed an issue and adjourned the matter sine die.

2. In the meantime, the petitioner herein had already applied, even before filing of the written statement, before the Mamlatdar that he was a tenant in respect of the suit property. Thereafter, an application came to be moved on behalf of the plaintiff that considering the weakness of the pleadings, the issue would not arise and, therefore, that issue should be struck off. Defendant No.1 moved an application on 24.3.2003, pointing out to the Court that the matter was adjourned sine die till the issue of tenancy is finally decided. It was also brought on record that the original defendant No.1 Yeshwant Naik had expired and his legal heirs were brought on record and in the meantime, his wife Smt. Manjula Y. Naik expired and legal heirs were also brought on record and, as such, he requested that the matter be adjourned sine die. To that, reply was filed on behalf of respondent No.1 herein to dismiss the application and to delete the issue No.7 which came to be done by the trial Court.

3. It is no doubt true that the trial Court can recast any issue, if such an issue is not required to determine any issue in controversy. Merely on

flimsy pleadings, an issue of tenancy cannot be framed. However, in the instant case, the issue of tenancy was framed. At the time when the Written Statement was filed, the petitioner herein was already before the Tenancy Court with the application for declaration of tenancy. In that context, the learned trial Court was not right in striking off the issue as framed.

4. On behalf of respondent No.1, learned Counsel has relied on Judgments of this Court in the case of Pandu Dhondi Yerudikar and another vs. Ananda Krishna Patil, AIR 1975 Bombay 52; in the case of Anandrao Bandu Jadhav and another vs. Vijaysinha Balwantrao Pawar and others, AIR 1983 Bombay 32 and the Judgment of the Apex Court in the case of D.M. Deshpande and ors. vs Janardhan Kashinath Kadam (dead) by L.Rs. and others AIR 1999 SC 1464. The propositions as set out therein cannot be disputed. However, the facts of each case must be seen. The issue as framed in the instant case was already pending before the Mamlatdar. Apart from the pleadings in the written statement, the petitioner herein was already before the Mamlatdar's Court with an application for declaration of tenancy. In the light of that, in my opinion, the impugned order of the trial Court clearly discloses error apparent on the face of the record and in the light of that, the impugned order dated

18.6.2003 is liable to be set aside and issue No.7 as framed, is liable to be restored.

Considering that, Rule is made absolute in terms of prayer Clause (a), with further direction that issue No.7 stands restored. In the circumstances of the case, there shall be no order as to costs.

On behalf of respondent No.1, learned Counsel contends that respondent No.1 is aged about 70 years and in these circumstances, the learned Mamlatdar is directed to dispose of the matter as early as possible and at any rate on or before 3lst March, 2004.

F.I. REBELLO, J.

ssm.